Proposed Approach for the Development of a TMDL Endpoint for Trash in the Anacostia River

Maryland Department of Environment
District of Columbia Department of Energy and Environment

Purpose

MDE and DOEE seek input from the public on the following proposed approach for developing the TMDL endpoint for the revised TMDL for trash in the Anacostia River.

Background

Section 303(d) of the Clean Water Act requires that each State identify those waters (called "water quality-limited segments") for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared. A TMDL is an estimate of the maximum amount of a pollutant that a waterbody can assimilate without being inconsistent with water quality standards. This total load includes pollutants that come from end-of-pipe dischargers, stormwater runoff, surface runoff from non-permitted areas (e.g., agriculture, open areas, forest, etc.), as well as a "margin of safety" to account for uncertainties in the relationship between estimated pollutant loads and receiving water quality. TMDLs are important tools because they provide an analytic framework for implementation actions designed to achieve water quality standards in a watershed. TMDLs inform other federal and state programs of the pollutant reductions needed by source to achieve water quality standards.

On September 21, 2010, the Environmental Protection Agency (EPA) approved a TMDL for trash in the Anacostia River submitted jointly by the Maryland Department of the Environment (MDE) and the District of Columbia Department of the Environment) (applicable agency is now referred to as the Department of Energy and Environment (DOEE). The TMDL report can be accessed at: http://www.mde.state.md.us/programs/Water/TMDL/ApprovedFinalTMDLs/Pages/tmdl_final_anacostia_trash.aspx.

As part of their efforts to achieve the 2010 TMDL allocations, the District, Montgomery and Prince George's Counties undertook significant efforts to prevent trash from reaching the river and/or to remove trash in the river. For example, the District has enacted legislation to reduce the types of plastic products that commonly make their way to the river. D.C. Code § 8-102.01, et seq. (imposes a fee on use of disposable bags that is then used to fund trash clean-up efforts); D.C. Code § 8-1531, et seq. (styrofoam ban). The District also has installed eight end-of-pipe trash traps, implemented targeted street sweeping, provided grants to groups to help remove trash from the river, and begun more rigorous enforcement of anti-dumping laws. The District of Columbia Water and Sewer Authority is implementing controls that will eliminate discharge of

trash through combined sewer overflows and operates trash traps and a fleet of skimmer boats. These efforts taken in connection with the 2010 TMDL have resulted in noticeable reduction in trash levels in the Anacostia River.

On September 19, 2016, the Natural Resources Defense Council (NRDC) filed suit in the U.S. District Court for the District of Columbia seeking vacatur of EPA's approval of the TMDL. [Civil Action No. 16-1861 (JDB)]. NRDC alleged that a TMDL must be expressed as an amount of a pollutant (trash) that a waterbody can receive while still meeting water quality standards, not a quantity to be removed or prevented from entering. On March 30, 2018, the Court ruled in favor of NRDC. In light of the Court's Order, MDE and DOEE, with EPA's assistance, intend to develop replacement TMDLs and jointly submit them to EPA.

From August 24, 2018 through October 23, 2018, DOEE, MDE, and EPA solicited relevant data on trash that has been collected within the Anacostia watershed since the approval of the 2010 TMDL. Data was received from 10 entities, both public and private. After joint review and discussion by MDE, DOEE and EPA, all three agencies agreed that MDE and DOEE would solicit stakeholder opinions on the preferred approach for the development of a revised TMDL endpoint, which is described in detail below.

Proposed TMDL Endpoint

Narrative criteria are designed to protect the designated uses of Maryland and District of Columbia surface waters. All surface waters in Maryland are protected for water contact recreation. Code of Maryland Regulations at Title 26 Subtitle 08, Chapter 2 states that waters of the state may not be polluted by *"...substances attributable to... waste that will settle to form sludge deposits that... are unsightly... and create a nuisance, or interfere directly or indirectly with designated uses..."* or " *material, including floating debris... and other floating materials... or other waste in amounts sufficient to be unsightly... create a nuisance; or interfere directly or indirectly with designated uses...*". All surface waters of the District, apart from wetlands, are designated for primary contact recreation and secondary contact recreation and aesthetic enjoyment. The District of Columbia Municipal Regulations at Title 21, Section 1104 state that "*...surface waters of the District shall be free from substances in amounts or combinations that... settle to form objectionable deposits; float as debris... or other matter to create a nuisance...*". In addition, the regulations state that "*...waters shall be free of... litter... that would constitute a hazard to the users...*" and "*...the aesthetic qualities... shall be maintained...*".

Because neither MDE nor DOEE have numeric water quality criteria for trash, the two jurisdictions must identify a numeric TMDL endpoint that will achieve the applicable narrative criteria. At this time, the jurisdictions are considering an approach that would set the revised TMDL endpoint at [redacted]. The TMDL endpoint would be achieved through adaptive implementation strategies designed to capture trash quantities that are consistent with the estimated baseline load.

The jurisdictions have tentatively identified this as the proposed approach to establishing the TMDL endpoint based upon their understanding of the CWA, federal regulations and the Court's Order because it expresses the TMDL endpoint as an amount of trash that, if introduced into the river, would implement the jurisdictions' applicable water quality standards, including their narrative water quality criteria. The proposed approach is informed by recently collected data and information (the 2018 data solicitation) and based on an assumption that the endpoint and the TMDL's allocations will, over time, be attained by appropriate capture and prevention practices.

Communication Details

Comment submissions to MDE and/or DOEE must be received by, or postmarked on or before, [INSERT DATE 30 DAYS AFTER PUBLIC MEETING DATE]. Submissions should be sent to MDE CONTACT and/or DOEE CONTACT by electronic mail to ASSOCIATED E-MAIL ADDRESSES. Electronic mail submissions including body text and attachments are limited to 150 megabytes.